

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re) Case No. 14-31229-SGJ-15
) Dallas, Texas
)
MTGOX, CO., LTD.,)
a/k/a MTGOX KK,)
)
Debtor.) October 28, 2014
) 9:34 AM
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)

TRANSCRIPT OF HEARING
159 NOTICE OF HEARING AND NOTICE OF STATUS CONFERENCE
FILED BY FOREIGN REPRESENTATIVE NOBUAKI NOBAYASHI
BEFORE THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE

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Colloquy

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1 THE COURT: The first matter I am going to take up is
2 MtGox because we have people on the phone on another continent
3 and we need to accommodate them, I think.

4 Okay, so let's go ahead first get appearances in the
5 courtroom from the lawyers in MtGox.

6 MR. MOLTON: Good morning, Your Honor. David Molton
7 of Brown Rudnick for the foreign representative of MtGox, Mr.
8 Kobayashi.

9 THE COURT: Okay. Good morning.

10 MR. MOLTON: And with me is Marcus Helt, as well --

11 THE COURT: Okay.

12 MR. MOLTON: -- our co-counsel.

13 THE COURT: Good morning. Um-hum.

14 MR. PHELAN: Robin Phelan, Haynes and Boone for the
15 class action plaintiffs.

16 THE COURT: Good morning.

17 MR. PENN: Good morning. John Penn on behalf of ePub
18 Bud.

19 THE COURT: Okay. Good morning. All right. Now, on
20 the phone, we'll go ahead and take appearances.

21 MR. ENGEL: Larry Engel, Morrison & Foerster for
22 CoinLab.

23 THE COURT: Good morning.

24 MR. TOWNSEND: Your Honor, Roger Townsend, Breskin
25 Johnson & Townsend and Jane Pearson, at Foster Pepper, also

Colloquy

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1 for CoinLab.

2 THE COURT: Okay. Good morning.

3 MR. SAVAL: Good morning, Your Honor. Daniel Saval
4 from Brown Rudnick, also on behalf of the foreign
5 representative, Mr. Kobayashi.

6 THE COURT: Okay. Good morning. All right.

7 THE INTERPRETER: Good morning. I'm Seiji Shibasaki.
8 I'm the translator for Mr. Nobuaki Kobayashi.

9 THE COURT: Okay. Can you hear us okay?

10 THE INTERPRETER: Oh, yeah.

11 THE COURT: Okay.

12 THE INTERPRETER: I can hear.

13 THE COURT: All right. Well, we were last here on
14 September 10th, 2014 for a status conference. We heard a
15 brief report on September 10th about the status of the
16 Japanese proceeding. I'll just start, Mr. Molton, by looking
17 at my notes.

18 I think we heard that there had been a report to
19 creditors made by Mr. Kobayashi on July 23rd. There had been
20 a revised deadline for proofs of claim, I guess, because of
21 notice concerns about a bigger pool of creditors than maybe
22 first thought and that new revised deadline is sometime in May
23 2015, I was told.

24 We also heard a report that Mr. Kobayashi was engaged
25 in discussions with various potential buyers for MtGox's

1 assets. And finally, my notes show that it was reported that
2 the Deloitte firm had been retained by Mr. Kobayashi to engage
3 in forensic investigations regarding the missing bitcoin.

4 So rolling this now six weeks down the road, can you
5 give us further updates?

6 MR. MOLTON: It's my pleasure to do so, Your Honor,
7 and as Your Honor does know, the bankruptcy trustee of MtGox,
8 Mr. Kobayashi, who is also the foreign representative is on
9 the phone and he is available with his team and a translator
10 to take all of your questions.

11 What I would like to do, Your Honor, is go through my
12 status report. It shouldn't take that long.

13 THE COURT: Okay.

14 MR. MOLTON: And then to the extent that Your Honor
15 has any questions, open up the telephone for Mr. Kobayashi and
16 anybody else who wants to be heard here.

17 THE COURT: Okay.

18 MR. MOLTON: Needless to say, of course, Your Honor,
19 if Your Honor needs to ask Mr. Kobayashi a question during my
20 status report, of course, please feel free to interrupt me.

21 THE COURT: All right.

22 MR. MOLTON: Your Honor, I'm going to give a report
23 as to what's happened in the past month and a half and as Your
24 Honor will see, there has been activity around the world, as
25 Your Honor has seen from our 1518 pleading which we filed

1 earlier this month.

2 But just to go back again, the foreign representative
3 filed this Chapter 15 after the bankruptcy was commenced in
4 Japan, and I think it's important to note that we're only six
5 months into this case in Japan, Your Honor. And the Chapter
6 15 was filed here principally to stay U.S. proceedings to
7 allow the foreign main proceeding to go unfettered in its
8 process forward and to take advantage of the Chapter 15 stay
9 of litigation here in the United States.

10 Currently, as Your Honor does know, there are no
11 pending motions before this Court today and that's because
12 substantially all of the debtors' assets are located in Japan.
13 That's the location of the foreign main proceeding and most of
14 the activity in connection with the sale and the liquidation
15 is presently taking place in the Tokyo court. I'm going to go
16 and discuss briefly some of the things that have happened in
17 Canada and England, as well --

18 THE COURT: Okay.

19 MR. MOLTON: -- and give Your Honor an update as to
20 the status of those two other ancillary proceedings that have
21 been commenced since the last status conference.

22 THE COURT: Okay.

23 MR. MOLTON: The next creditors' meeting, Your Honor,
24 is going to be held on November 26th, 2014 at 1 p.m. Tokyo
25 time. In continuing with his prior procedure, Mr. Kobayashi

1 and his team continues to provide creditor updates on the
2 MtGox Web site. The last update was made, Your Honor, on
3 September 1st, notifying creditors of various changes in
4 addresses and other things. But the notice of the November
5 26th meeting is out and we anticipate at our next status
6 conference to be able to report on that event.

7 The first main item that I want to talk to Your Honor
8 about is the overview of the sales process. I know Your Honor
9 was very interested in that last time and it has progressed
10 and I want to talk about where we are to the extent I can. Of
11 course, Mr. Kobayashi is on the phone to answer your
12 questions.

13 Since the commencement of the bankruptcy proceedings
14 in Japan, Your Honor, in April, the trustee has received
15 preliminary proposals for MtGox's business from a number of
16 parties and is currently in a final stage of the selection
17 process. As we've reported before, Your Honor, the bankruptcy
18 trustee periodically meets with the Tokyo court which
19 supervises the trustee's activities, and Mr. Kobayashi can
20 discuss how that works if Your Honor wants to ask him
21 questions regarding that nature.

22 THE COURT: Okay.

23 MR. MOLTON: The bankruptcy trustee, Mr. Kobayashi,
24 expects the buyer not only to purchase certain assets of the
25 bankruptcy estate but also to cooperate with him in the

1 bankruptcy proceeding in Japan, particularly with respect to
2 three items: cooperation in the investigation of the lost
3 bitcoins, which I think remains a material subject and
4 principal subject of a lot of the creditors' concerns;
5 cooperation in connection with creating a system for the
6 filing of proof of claim; and cooperation in the distribution
7 of the bankruptcy estate. So those are the three things, in
8 addition to more traditional aspects of a purchase agreement
9 that the trustee is focusing on as he entertains
10 communications and proposals with prospective purchasers.

11 Accordingly, Your Honor, Mr. Kobayashi is taking into
12 consideration the ability and willingness of the prospective
13 purchaser to cooperate with him in all these areas for the
14 benefit of the MtGox creditors and stakeholders. To be sure,
15 the bankruptcy trustee has not made any decision at this time
16 with respect to the nature of the distribution that will go
17 out to creditors.

18 I know I've been asked and other folks here in the
19 U.S. and I -- no doubt one the main concerns I've read about
20 on the blogs is whether the distribution will be in kind,
21 meaning in bitcoins which creates its own challenges and
22 problems -- maybe not insurmountable ones -- or in currency.
23 There's not been any decision made as to that, although
24 certainly the bankruptcy trustee is aware of the issue and is
25 investigating it.

Colloquy

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1 As I've noted, Your Honor, the sales process is being
2 supervised by the Tokyo court. The following general timeline
3 provides a general description of what has taken place to date
4 and where I think we're going based on the information that
5 Mr. Kobayashi and his team have given to me.

6 As Your Honor knows, April 24th was the commencement
7 of the bankruptcy proceeding in Tokyo. From April to July,
8 the bankruptcy trustee, Mr. Kobayashi, held meetings with
9 candidates for prospective purchasers and/or their legal
10 counsel who have expressed an interest in purchasing the MtGox
11 assets or parts thereof.

12 With respect to those prospective purchasers, he
13 submitted questionnaires for those who are serious in going
14 forward during the period of time from -- over the summer, and
15 by August, he had received responses to those questionnaires.

16 Following that, the bankruptcy trustee requested that
17 candidates, prospective purchasers make final proposals by
18 mid-October 2014. The bankruptcy trustee, as of now, has
19 received proposals from a number of candidates and is
20 presently evaluating them in accordance with his duties to the
21 creditors and to the bankruptcy court in Japan. And that is
22 where we are now, Your Honor, in the sales process.

23 To the extent that there is anything further to
24 report in the future, either at the next status conference or
25 by way of a notice of filing, just to give the folks who are

1 paying attention to this docket, information, we will endeavor
2 to do that. But that's where we are right now. And Mr.
3 Kobayashi is on the line to answer questions.

4 The second item I want to get to, Your Honor, is the
5 status of the lost bitcoin investigation which, aside from the
6 sale of MtGox assets, the liquidation of MtGox, remains,
7 certainly in the public domain, a concern and of interest to
8 creditors.

9 As we stated at the last status conference, Your
10 Honor, the trustee has hired Deloitte to conduct the
11 investigation with respect to the lost bitcoins and cash on
12 the MtGox exchange. The bankruptcy trustee has preserved and
13 copied the database used by MtGox to operate the bitcoin
14 exchange, and I can, and have been, allowed to advise Your
15 Honor that based on Deloitte's review of the database, it's
16 revealed that the database that came into the custody of the
17 trustee contains some missing and inconsistent information.
18 So for this and other reasons, Deloitte's investigation into
19 this issue remains ongoing.

20 The bankruptcy trustee, with the assistance of
21 Deloitte, is working to get a complete and consistent database
22 and any other information necessary, so that the investigation
23 can proceed expeditiously. The bankruptcy trustee, again, is
24 available to answer any questions you may have regarding
25 Deloitte's inquiry in the status of this investigation, but at

1 the present time, that's where we are with respect to that.

2 And I do also want to point, Your Honor, that we are
3 six months into this case. I know Your Honor, during the last
4 status conference, expressed questions going to the nature of
5 the investigation, the sales process and all that. And I just
6 do want to say that Deloitte is a sophisticated forensic firm.
7 They're engaging their resources in this and the trustee is
8 committed towards solving or seeking to solve some of the
9 issues regarding the lost bitcoins. And when and to the
10 extent that information becomes available to act upon that,
11 basically, the trustee will then consider that action.

12 So the status of the proof of claim process in Japan
13 is the next item that I want to talk about, Your Honor. Under
14 the bankruptcy court's order, the following deadlines were
15 established: November 28th, initially was -- 2014, as Your
16 Honor noted, was originally the deadline for filing proofs of
17 claim, and September (sic) 25th, 2015, was the deadline for
18 completing the claims investigation process.

19 On July 24th, however, the Tokyo court issued an
20 order extending the deadlines as follows, setting May 29th,
21 2015 as the deadline for filing the proof of claims and
22 September 9th, 2015, is now the deadline for completing the
23 claims investigation process.

24 THE COURT: Okay. Say that again, the deadline for
25 investigating the proof of claim process.

1 MR. MOLTON: Is May -- the deadline for completing
2 the proof of claim investigation process is September 9th,
3 2015.

4 THE COURT: So that's been moved up?

5 MR. MOLTON: To -- no, but -- it hasn't been moved
6 up. May 29th is the deadline for filing proof of claims, of
7 2015 and September 9th, 2015 is the deadline for completing
8 the claims investigation process.

9 THE COURT: Okay. I thought you said earlier that
10 the original deadline for completing the proof of claim
11 process was September 25th, 2015.

12 MR. MOLTON: Oh, no, February 25th, 2015.

13 THE COURT: Okay.

14 MR. MOLTON: That's my fault, Your Honor.

15 THE COURT: Okay.

16 MR. MOLTON: That was the original deadline set in
17 the bankruptcy court's order.

18 THE COURT: Okay. Gotcha.

19 MR. MOLTON: And I do -- I've been advised by my
20 colleagues and by Mr. Kobayashi's team in Japan that these
21 deadlines may be subject to extension from the bankruptcy
22 court's original order date and that is not remarkable. And
23 although these are the dates now, they can be further extended
24 based on the bankruptcy court's orders. But as of now, those
25 are the dates.

1 As we stated at the September 10th, 2014 conference,
2 Your Honor, the bankruptcy trustee requested an extension of
3 the prior November bar date deadline, which then tied into the
4 February 25th, 2015 claims investigation deadline, in order to
5 implement a reasonable and smooth method of filing.

6 For such purposes, it was necessary for the foreign
7 representative to sufficiently confirm with the cooperation of
8 professionals, the details and method of use of data regarding
9 the business of the bankrupt entity, which the bankruptcy
10 trustee preserved and also to consider the situation of the
11 investigation of the background behind the disappearance of
12 the bitcoin.

13 I want to clarify that the current bar date set for
14 May 29th, 2015 was not proposed by the bankruptcy trustee but
15 was established by the Tokyo court. The bankruptcy trustee
16 only expressed his opinion that such extension was reasonable
17 but did not offer a new date when he sought the extension of
18 the original deadline that was in the bankruptcy court order.
19 It was the Tokyo court that set that deadline, and that may
20 have been a misapprehension from the last status conference,
21 or that was unclear in the last status conference.

22 The bankruptcy trustee, Mr. Kobayashi, is available
23 to answer any questions the Court may have regarding the
24 status of the proof of claim form, the considerations for
25 required -- for completing that proof of claim form and the

1 reasons that he thought, based on his judgment as the
2 appointed fiduciary, the trustee, under Japanese law for
3 seeking to extend the original date in the bankruptcy court's
4 original order.

5 The fourth topic that I would like to address, Your
6 Honor, is the status of U.S. proceedings because as I
7 mentioned at the very get-go, the principal purpose of us
8 coming to you and seeking this Chapter 15 recognition for the
9 Japanese proceeding as a foreign main proceeding was the
10 litigation against the debtor that was presently occurring in
11 Illinois in the Greene class action and the CoinLab litigation
12 in Seattle.

13 I'm going to first address the CoinLab litigation in
14 Seattle, Your Honor. On September 4th, 2014, CoinLab filed a
15 motion for relief from stay seeking to lift the administrative
16 stay against Tibanne. To refresh your recollection, Your
17 Honor, not only did MtGox obtain a stay in that litigation and
18 then that stay was also accompanied by the Chapter 15 stay,
19 but the other parties, the other defendants, had a stay as
20 well from earlier in the litigation and actually before, I
21 believe, my firm became involved in this matter.

22 On September 15th, Your Honor, of this year, MtGox
23 and Tibanne filed separate objections to CoinLab's motion.
24 And again, this motion was to lift the stay regarding Tibanne
25 only. On September 19th, Your Honor, CoinLab filed a reply

1 to MtGox and Tibanne's objections. Although the motion has
2 been fully briefed and submitted to the Seattle court, the
3 Seattle court, to my knowledge, as I stand here today, has not
4 decided whether it will make a decision based only on the
5 pleadings or whether it will schedule a hearing for oral
6 argument. Mr. Engel may be able to update that. I know he's
7 on the phone and he is, of course, CoinLab's counsel.

8 MR. TOWNSEND: Judge, if I can interject, this is
9 Roger Townsend. I'm litigation counsel here in Seattle and
10 that's a correct recitation of the facts. There's been no
11 hearing for oral argument scheduled by Judge Pechman in
12 Seattle.

13 MR. MOLTON: Thank you.

14 THE COURT: Okay.

15 MR. MOLTON: Turning to the Greene class action in
16 Illinois, Your Honor, as Your Honor knows, that there was as
17 proposed class action settlement, vis-a-vis certain settling
18 parties which were not MtGox; that was, of course, dependent
19 on them getting approval from the Japanese court as part of
20 what might be a sales process, or separate from that. And the
21 district judge in Illinois held a status conference on October
22 2nd, 2014. I was present on the phone for that status
23 conference, Your Honor. It was a pretty quick one.
24 Basically, all the parties acknowledged that the sales process
25 was going forward in Japan and that until that sales process

1 resolved itself, one way or another, basically the Greene
2 class action settlement was still in the state it was prior to
3 that. And accordingly, Your Honor, the district judge
4 adjourned the status conference or set a new status conference
5 for December 10th, 2014, to report.

6 One of the last items, Your Honor, that I want to
7 address that's going on here in the United States in terms of
8 the status of the U.S. proceedings, as Your Honor knows, the
9 Department of Justice had seized five million dollars of MtGox
10 funds that were held in another entity account here in the
11 United States and it was seized by the Department of Homeland
12 Security in May 2013. The communications between counsel for
13 the foreign representative here in the United States and the
14 U.S. Attorney's Office and the Department of Justice are
15 ongoing. And we continue to hope they will continue to mature
16 and progress to a point where we can realize what is the hope
17 and aspiration of the foreign representative which is to
18 basically have that money turned over to him and repatriate
19 that money for distribution to MtGox's creditors in Japan.

20 But as Your Honor knows, dealing with the Department
21 of Justice, that's all I can tell you right now. It's an
22 ongoing process.

23 THE COURT: Okay.

24 MR. MOLTON: Okay. I want to go to the status of
25 other proceedings, Your Honor, because we have had activity

1 since the last status conference in other parts of the world.

2 On September 22nd, Your Honor, of this last month,
3 the foreign representative filed under the United Kingdom's
4 Cross-Border Regulation, which enacted the Model Law in
5 England, a recognition application before the High Court of
6 Justice, Chancery Division, Companies Court. On September
7 26th, as stated in our Section 1518 notice, which we dated --
8 which was dated October 7th, 2014, and is represented by
9 docket entry number 161 on this docket, the United Kingdom
10 High Court of Justice entered an order recognizing the
11 Japanese proceeding as a foreign main proceeding and granting
12 relief.

13 The foreign representative's primary purpose in
14 seeking recognition in the United Kingdom was to have the
15 ability to investigate and repatriate certain MtGox assets
16 located in the United Kingdom, specifically, cash in certain
17 accounts. Currently, the foreign representative is
18 corresponding with various UK companies that hold MtGox's
19 funds for the purpose of repatriating those funds for
20 distribution -- to Japan for distribution to creditors. Those
21 communications are ongoing and we will report more on this,
22 Your Honor, when I have something more to report.

23 THE COURT: Okay.

24 MR. MOLTON: Also on September 24th, Your Honor, the
25 foreign representative filed a recognition application in

1 Canada before the Ontario Superior Court of Justice in its
2 Commercial List Division. Again, that was pursuant to
3 Canada's enactment of the Model Law. And basically, Your
4 Honor, what that recognition proceeding was aimed at was
5 taking advantage of the Model Law's Section 20-A, Article 20-
6 A, which is the equivalent of 1520(a)(1), stay of proceedings
7 because a related class action had been filed and served on
8 MtGox in Japan but that class action was pending and commenced
9 in Canada.

10 On October 3rd, as stated in our 1518 notice, the
11 Ontario Superior Court of Justice entered an order recognizing
12 the Japanese bankruptcy proceeding as a foreign main
13 proceeding and granted relief including the automatic stay.

14 Your Honor, that is, in sum and substance, my report.
15 As Your Honor can see from my report, the foreign
16 representative is engaged globally in order to seek, recover,
17 and repatriate to Japan for purpose of distribution to MtGox,
18 creditor's assets of MtGox and is engaged also in the foreign
19 main proceeding in a deliberate, informed sales process that,
20 hopefully within a short time, I'll be able to report more on.

21 So if Your Honor has no more questions, I'll turn the
22 floor over to others or to Your Honor to ask Mr. Kobayashi,
23 who is on the phone, of any questions.

24 THE COURT: Well, I do have a couple of questions but
25 I'm first going to turn the -- ask that you yield the podium

1 to Mr. Phelan. Do you have anything that you wanted to
2 report?

3 MR. PHELAN: No comments, Your Honor.

4 THE COURT: No comments?

5 MR. PHELAN: No.

6 THE COURT: All right, what about lawyers on the
7 phone, maybe for CoinLab. Anything you wanted to put on the
8 record?

9 MR. TOWNSEND: Your Honor, briefly. This is Roger
10 Townsend calling with regard to the -- on behalf of CoinLab
11 and counsel in the Seattle litigation.

12 I think that was a fair recitation of the facts
13 regarding the pendency of the request to continue against
14 Tibanne and that's before Chief Judge Pechman here in the
15 Western District of Washington and currently pending.

16 The point that I would add that I think that
17 shouldn't be lost in this process is that we have -- CoinLab
18 has exclusive rights that we assert are still valid and that
19 would survive the bankruptcy process. I'll let Mr. Engel
20 respond to any questions regarding the legality of that and
21 the pending precedent, but we believe that's a well-founded
22 argument.

23 And furthermore, pursuant to that litigation,
24 pursuant to that agreement, the parties agree to the informed
25 selection clause providing that litigation would occur here in

1 Seattle, Washington.

2 So we continue to monitor the process, continue to
3 look forward to our day in court pursuant to the agreement
4 where that exclusive license agreement of the rights and
5 obligations, the impetus of that get litigated here in
6 Seattle. So we continue to monitor this process and are
7 seeking relief in Seattle regarding that.

8 We are seeking relief in this proceeding at this time
9 and because that license, ultimately, it should be aware to
10 the parties at this hearing and this Court, that since Tibanne
11 has been -- a hundred percent of the employees of MtGox and
12 Tibanne were, in fact, employees of Tibanne, that therefore,
13 the intellectual property assets, the assets that's purported
14 to be sold here is really an asset of Tibanne and the
15 intellectual property is, therefore, held by Tibanne and that
16 that sale is subject to those rights of Tibanne which are then
17 subject to CoinLab's claims which are against both MtGox and
18 Tibanne. So any sale will have to take that into consider,
19 and we'll continue to monitor the process here and in Seattle
20 and in Japan for that purpose.

21 We do have counsel in Tokyo and who has been in
22 communication with the trustee, and the trustee's office has
23 been -- we have no complaints or objections regarding the
24 qualifications of the trustee.

25 MR. ENGEL: Your Honor, this is Larry Engel, if I may

1 just supplement that quickly. The key question that we would
2 ask Your Honor to ask Kobayashi-san is the nature of his
3 approach to this Court for any U.S. approval of the sale that
4 is proposed to be done in Japan. Your Honor has heard in our
5 various pleadings before, various precedents on which we rely,
6 365 and Qimonda, et cetera, for the protection of the license.
7 What's new is the Fairfield decision out of the Second Circuit
8 which gives the U.S. Bankruptcy Court in a Chapter 15 further
9 responsibilities, in our view, and further rights for U.S.
10 creditors with respect to sales, and much less deferential
11 than was thought by many before that to foreign
12 representatives approving sales in the foreign main
13 proceeding.

14 So the questions which we're keenly interested in is
15 whether this is purporting to be a sale free and clear of what
16 other -- many things, licenses in particular, whether they're
17 trying to sell free and clear of 365(n) and whether there are
18 any releases of third parties including Tibanne, that would be
19 imposed on U.S. creditors which raises 1506 and other issues,
20 in our view.

21 So the question is when do those issues get joined?
22 Do they get joined before the sale in Japan or will there be a
23 process for the Japanese foreign representative coming here,
24 so that these matters can be raised in a sale approval process
25 in the U.S. following on whatever process they've got going in

1 Japan. We just need to understand what the game is, so we
2 know when we have to make our move.

3 THE COURT: All right. Well, Mr. Molton, I was going
4 to ask a little bit more about the sale process. I think
5 these questions probably are more for you than Mr. Kobayashi
6 with regard to the 365(n) and Fairfield and whatnot. Let me
7 just back up, though.

8 With regard to the sale process, I had just an
9 elementary question of are there any more deadlines or is
10 there a timetable at all beyond what you told me so far, the
11 mid-October deadline of submitting proposals?

12 MR. MOLTON: Your Honor, I think that's a question
13 best asked to Mr. Kobayashi.

14 THE COURT: Okay.

15 MR. MOLTON: I'm not sure, and my understanding,
16 which I am not going to guarantee, is that there are no fixed
17 deadlines. The process is a sales process that's run by the
18 trustee with monitoring and supervision by the bankruptcy
19 court but there's no -- it's not like there's by X day you
20 have to have this, by Y day you have to that. But I am going
21 to let Mr. Kobayashi answer that question, if you want to
22 raise to him right now or if we wanted me to get to some of
23 the other matters.

24 THE COURT: All right. Well, Mr. Kobayashi, my first
25 question for you regarding the sale process is can you give me

1 an idea about timing? Are there future deadlines that you
2 have imposed on interested buyers or can you otherwise give
3 sort of a time frame for moving forward on the sale process?

4 MR. KOBAYASHI: This is Nobuaki Kobayashi. I'm the
5 bankruptcy trustee and thank you for giving me the opportunity
6 to explain the evidentiary proceedings. At present, MtGox is
7 going through the buyer selection process, and each potential
8 buyer has given its own statement of intention. And now I'm
9 considering those in order to choose who should be the buyer.
10 And so I believe that we are getting closer to final steps of
11 the selection process, and my view is that I will be able to
12 arrange for contracts to be entered into with the buyer in
13 November.

14 THE COURT: All right. Is there anything like an
15 option process or competitive bidding that would take place
16 after that, or would you simply propose what you think is the
17 best offer to the court in Japan?

18 MR. KOBAYASHI: As I mentioned, each potential buyer
19 has submitted a statement of intention on February 14th,
20 setting out a proposal. So my intention is to make a decision
21 based on that. And the proposal that I just mentioned
22 contains the price for the assets of MtGox and that I have
23 also requested them to provide information on the
24 investigation of the lost bitcoins and the establishment of
25 the system for filing of proofs of claim and also the

1 distribution of the bankruptcy estate. And so I will consider
2 each of them comprehensively and discuss with the court in
3 order to make a final decision.

4 THE COURT: All right.

5 MR. MOLTON: If I may, Your Honor?

6 THE COURT: You may.

7 MR. MOLTON: Okay. I'm going to try and address some
8 of those issues.

9 THE COURT: Okay. Okay.

10 MR. MOLTON: First of all, with respect to the
11 summation to the jury given by my friends on the phone
12 regarding the merits arguments on CoinLab, I'm not going to
13 belabor this Court or the people behind me with the foreign
14 representative's position other than to say we vigorously
15 disagree, and our positions vis-a-vis that CoinLab litigation
16 are well known and have been stated here before.

17 In the pleadings, clearly we disagree that MtGox
18 breached anything. Indeed, we think that on the other hand,
19 it was CoinLab who failed to provide the consideration
20 required by that agreement, giving us rights that it's void ab
21 initio because it's illegal. They didn't get the approvals
22 that were required under state and federal law.

23 They didn't -- also, it's subject to rescission for
24 that ground and for a number of reasons, they also breached
25 the agreement.

1 Suffice it to say, they also, using a little bit of
2 French, took, absconded, converted, whatever you want to say,
3 a great deal of cash, and all that is subject to dispute and
4 I'm not going to belabor the point with it.

5 But getting to the heart of what Mr. Engel said, the
6 Fairfield decision, I'm very familiar with since I lived with
7 that decision for three-and-a-half years before the Circuit
8 finally agreed with my position and our position, but that's
9 something that we think, Your Honor, is focused on whether
10 there's U.S. assets. At this point in time, there's no sale.
11 There's no opportunity to analyze whether what is sold is an
12 asset, what is an interest of the debtor within the
13 territorial jurisdiction of the United States pursuant to
14 1520(a)(2).

15 I want to note that in Fairfield, we were dealing
16 with a SIPA claim, with a SIPA trustee in the United States
17 running a SIPA fund located in New York. Qimonda, another
18 Circuit opinion that wasn't a 363 sort of issue, but dealt
19 with U.S. patents, U.S. interests in U.S. patents, Elpida,
20 which dealt with 363 by Judge Sontchi, I believe it was, also
21 dealt with U.S. intellectual property.

22 There's been no adjudication whatsoever that whatever
23 is being sold in U.S. property. Clearly if there's U.S.
24 property being sold, we understand pursuant to the statute
25 what needs to be done. It's fair to say also, Your Honor,

1 that my understanding of the sales process going forward is
2 that they're looking to sell Japanese assets, non-U.S. assets,
3 and assets that would not require approval by any foreign
4 court, whether it be the court in the UK, who would then have
5 under Article 20 of the Model Law, would have certain
6 obligations in Canada with respect to Canadian assets or the
7 U.S. with respect to U.S. assets.

8 But all of what you just heard from my friends at
9 CoinLab is really premature until we have a sale. So the
10 bottom line is, Your Honor should note that.

11 THE COURT: Okay. And the bottom line on the sale
12 process, I mean I am just trying to gain an understanding,
13 it's not necessarily similar to what we're used to in the U.S.
14 courts as far as an auction and bid procedures and
15 protections. And it's going to play out --

16 MR. MOLTON: It's going to play --

17 THE COURT: -- on whatever timetable the Court and
18 professionals think is prudent. And it doesn't sound like
19 it's necessarily going to be a free and clear kind of thing
20 like we're used to. The buyer is going to be involved in the
21 process going forward with this concept of cooperation, is
22 that accurate?

23 MR. MOLTON: Yeah, well it -- I don't want to get
24 into the -- I don't know and I don't want to get into what the
25 eventual sales terms will be. It may be that the buyer will

1 buy free and clear of all liabilities.

2 But I do want to say a few words about what Your
3 Honor said because I think we all get used to what we do here,
4 and that doesn't mean the rest of the world does it. But it's
5 clear that what the rest of the world -- what Japan is doing
6 is very similar to what the Commonwealth Courts in England do,
7 is the trustee is supervised, has a supervisory relationship
8 with the presiding court. I took a look at the Bankruptcy Act
9 of Japan and I confirmed with Mr. Kobayashi's team that the
10 bankruptcy court in Japan does approve the sale there -- does
11 approve the sale there. That Mr. Kobayashi has authority as
12 their court-appointed bankruptcy trustee to sell assets
13 subject to the approval of the Court.

14 Well, under 363 as Your Honor knows, you can do a
15 private sale under 363. There's nothing stopping a private
16 sale, although arguably, some of the case law says it's
17 preferable, to get the best and highest bid, to have a public
18 auction process but that isn't necessarily the case in the
19 rest of the world.

20 And if you're going back to the Fairfield decision
21 that was raised by my friend, Mr. Engel, which, of course, I
22 know very well, the bottom line there is that the BVI court in
23 Fairfield approved the sale but approved it under BVI law
24 which meant that was it fair at the time that it was signed
25 and not taking into account which the 363 standards do,

1 subsequent circumstances until the bankruptcy court signs and
2 approves it. So that was the issue there, is not necessarily
3 the approval of the court but the standard by which the matter
4 is approved. And suffice it to say that the standard by which
5 the Japanese bankruptcy court is operating is one that's not
6 remarkable, not outside the bounds of what we see from sister
7 jurisdictions, including our English sister jurisdiction, and
8 it will go accordingly. And until there's such a time as we
9 have a sale, Your Honor, there's really not much more to say
10 than all parties reserve their rights.

11 THE COURT: Right.

12 MR. MOLTON: You know?

13 THE COURT: Right. Right. Well, and we're really
14 going to have to wrap it up.

15 MR. MOLTON: Yeah.

16 THE COURT: But I always like to ask this question
17 before we end, currency on hand -- fiat currency versus
18 bitcoin. I know that we heard in prior status conferences
19 that the trustee had been successful in finding different
20 accounts around the world. What is the status of that right
21 now?

22 MR. MOLTON: Yeah, I can give a --

23 THE COURT: Okay.

24 MR. MOLTON: -- little bit of an update regarding
25 England --

1 THE COURT: Okay.

2 MR. MOLTON: -- because the English Cross-Border
3 Regulation proceeding was geared towards that end. And I'm
4 going to use U.S. dollar figures --

5 THE COURT: Okay.

6 MR. MOLTON: -- because when I use yen figures, it
7 confuses me. So --

8 THE COURT: Um-hum, me, too.

9 MR. MOLTON: Okay. So my understanding, Your Honor,
10 is in England it was discovered that there's approximately --
11 in two accounts or held by two entities, approximately 750,000
12 dollars' worth of U.S. currency.

13 THE COURT: Okay.

14 MR. MOLTON: And this is currency -- my understanding
15 it's currency, it's not bitcoin, although because I'm --
16 clearly my -- I think Mr. Kobayashi doesn't want me expending
17 my hours doing the work of my English colleagues, I'm not as
18 pressing and/or up-to-date on those issues as others might be.
19 But that's what I understand has been the -- in terms of a
20 status report, what's happened in the last month is those
21 monies are seeking to be recovered and repatriated to the
22 Japanese proceeding.

23 THE COURT: All right. In previous reports, I think
24 we were up to seven million or so --

25 MR. MOLTON: Yes.

Colloquy

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1 THE COURT: -- of U.S. dollar equivalent fiat --

2 MR. MOLTON: Yes, I've got nothing new on that, Your
3 Honor, and it may be that Mr. Kobayashi's team has some new
4 information but I don't have anything new here for you on
5 that.

6 THE COURT: All right. Well, before we wrap up, I'll
7 just ask Mr. Kobayashi and his team, anything further to add
8 to what Mr. Molton just said about the collection of currency
9 around the world?

10 MR. KOBAYASHI: I don't have anything to add.

11 THE COURT: Nothing to add. All right. My last
12 question will be Mr. Karpeles, is he continuing to be
13 involved, cooperate or do we know anything about --

14 MR. MOLTON: Your Honor, I would request that you ask
15 that of Mr. Kobayashi.

16 THE COURT: All right. Mr. Kobayashi, I am curious,
17 is Mr. Karpeles assisting or cooperating in your efforts?

18 MR. KOBAYASHI: In my opinion, Mr. Karpeles is the
19 best person who knows the system and that used by my
20 colleagues, Mr. Karpeles, and therefore, I am asking the
21 questions, the plan information on that, from him and in that
22 sense, he is assisting me in the process.

23 THE COURT: Okay.

24 MR. KOBAYASHI: And however, the assets of MtGox are
25 under my supervision and control, so Mr. Karpeles does not

1 have access to those. So he is prohibited from accessing it.

2 THE COURT: Okay.

3 MR. MOLTON: Yeah, and just to wrap that up, Your
4 Honor, that conforms with my understanding and I'm glad Mr.
5 Kobayashi mentioned it, that to the extent there are questions
6 that the trustee has and his team have, that Mr. Karpeles
7 remains available to answer those questions, but as Mr.
8 Kobayashi said, he has no official or other role in terms of
9 the management, administration, decision-making control or
10 otherwise in connection with the debtor and its assets.

11 THE COURT: All right. All right, thank you.

12 MR. MOLTON: Thank you.

13 THE COURT: Well, Mr. Phelan, briefly, did you have
14 something?

15 MR. PHELAN: I'll be very brief, just to answer
16 the --

17 THE COURT: Okay.

18 MR. PHELAN: -- Fairfield discussion. I believe that
19 the BVI order was specifically subject to the United States
20 determination and that was noted in the United States opinion.
21 In light of Mr. Townsend's comments and the trustee's
22 comments, every position we have taken in this case or will
23 take is absolutely correct.

24 THE COURT: Okay. All right. Why would I expect
25 anything different, Mr. Phelan? Well, I just hope we have a

1 sale, so we can think about do I need to approve anything
2 about it or not.

3 All right, well, we wrap this up. I want to kind of
4 continue on the track of having periodic status conferences.
5 And I'm trying to decide do we go first of the year, does that
6 sound like it makes sense to everyone concerned? I would love
7 to think there would be a need to do it sooner but I am
8 thinking early January probably makes sense.

9 MR. MOLTON: Judge, I think that that's probably
10 reasonable in light of the fact that what we'd like to do is
11 come back with material progress to report, and doing this
12 every thirty days or forty-five days just has us at oftentimes
13 saying much of what we've said a month ago.

14 THE COURT: Exactly.

15 MR. PHELAN: Your Honor, it may be my notes are
16 incorrect but I thought I heard Mr. Kobayashi say that he
17 would have a decision by the end of November, and so maybe
18 that would dictate a status conference in December.

19 THE COURT: All right. Well, someone can move for a
20 status conference if they think there are big things we need
21 to discuss, but otherwise, I am going to ask you, Mr. Molton
22 and Mr. Helt to follow-up with my courtroom deputy and try to
23 get something the first week or two of January. She's out
24 right now, so I am not going to call her but --

25 MR. MOLTON: That's perfect, Your Honor.

Colloquy

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1 THE COURT: All right. Thank you. Well, if there's
2 nothing further, we're adjourned in MtGox.

3 MR. MOLTON: Thank you.

4 THE COURT: All right. Thank you and we'll hang up
5 on the conference call now.

6 Thank you, Mr. Kobayashi, for participating today.

7 MR. KOBAYASHI: Thank you very much.

8 THE COURT: All right. Thank you.

9 (Whereupon these proceedings were concluded at 10:28 AM)

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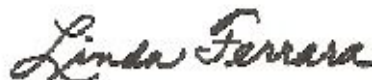
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C E R T I F I C A T I O N

I, Linda Ferrara, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



November 2, 2014

LINDA FERRARA

DATE

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